

ORIGINAL



19

1 Martin R. Galbut (#002943)
2 GALBUT & HUNTER
3 A Professional Corporation
4 2425 East Camelback, Suite 1020
5 Phoenix, Arizona 85016
6 Telephone: 602-955-1455
7 Facsimile: 602-955-1585
8 E-Mail: mgalbut@galbuthunter.com
9 Attorneys for Respondents Yucatan Resorts, Inc.,
10 Yucatan Resorts S.A., RHI, Inc., and RHI, S.A.

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 MAR 21 P 4:33

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF MATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKET NO. S-03539A-03-0000

In the matter of:

RESPONDENTS' JOINT MOTION FOR
RECONSIDERATION OF ORDER
DENYING CONTINUANCE

YUCATAN RESORTS, INC., d/b/a
YUCATAN RESORTS, S.A.,

RESORT HOLDINGS INTERNATIONAL,
INC. d/b/a
RESORT HOLDINGS INTERNATIONAL,
S.A.,

(ASSIGNED TO THE HONORABLE
MARC STERN, ADMINISTRATIVE
LAW JUDGE)

WORLD PHANTASY TOURS, INC.
a/k/a MAJESTY TRAVEL
a/k/a VIAJES MAJESTY

Arizona Corporation Commission
DOCKETED

MAR 21 2005

MICHAEL E. KELLY,

Respondents.

DOCKETED BY

CAK

NOW COME the Respondents, Resort Holdings International, Inc. ("RHI Inc."), Resort Holdings International, S.A. ("RHI S.A."), Yucatan Resorts, Inc. ("Yucatan Inc."), Yucatan Resorts, S.A. ("Yucatan S.A."), and Michael E. Kelly ("Kelly") (collectively, the "Respondents") and file this, their Joint Motion for Reconsideration of the Administrative Law Judge's ("ALJ")

1 Order Denying Continuance and, in support thereof, would respectfully show the Court the
2 following:

3 The ALJ's decision denying Respondents' Joint Motion for Continuance was obviously
4 based on the Arizona Securities Division's ("Division") Response to the Respondents' Joint
5 Motion for Continuance ("Response or "Division's Response"). However, the Response, while
6 interesting, albeit not factual or accurate, is based upon a false premise. The entire theme of the
7 Division's Response seeks to portray Respondents' Joint Motion for Continuance as the latest in a
8 long line of examples of Respondents' desires not to try this case on the merits. Simply stated, the
9 premise is false. It is obvious that in preparing its Response, the Division did not look at the
10 record in this proceeding.
11

12 In answer to the Division's filing of this case, Respondents requested an immediate
13 hearing of this matter.¹ Indeed, at the first pre-hearing conference, it was Respondents who
14 insisted that the hearing on the merits be held as soon as possible.² IT WAS THE DIVISION
15 THAT SOUGHT DELAY.³ It was the Division that requested time so that it could conduct
16 discovery and continue its investigation, notwithstanding the fact that it had already filed an
17 action.⁴ In fact, during the initial pre-hearing conferences, the ALJ insightfully observed that if
18 the Division needed additional time for discovery and investigation, and if, the Division did not
19 have evidence to support its very serious allegations, then the Division should not have brought
20 the case in the first place.⁵
21
22

23 It is the Division that has delayed matters by creating a moving target of discovery,
24

¹ See Respondent entity and individuals' respective Requests for Hearing and Notice of Appearance.

² See July 17, 2003, Pre-Hearing Conference Transcript at p. 7, lines 13-25, through p. 8, line 15.

³ *Id.* at p. 7, lines 13-19.

⁴ *Id.*

⁵ *Id.* at p. 23, lines 20-24, where ALJ Stern stated, "[a]s I say, the Division brings the case. I don't tell you guys to bring this. If you were short on some evidence to back up the allegations, then perhaps the case shouldn't have been brought."

1 successfully thwarting Respondents' discovery requests, consistently objecting to Respondents'
2 attempts to obtain documents and other information from the Division, successfully objecting to
3 Respondents' participation in any cross-examination of witnesses during EUO's, scheduling and
4 then canceling EUO's and, in its latest round of obstructionist activity designed to deny
5 Respondents their rights to due process and adequate defense, intentionally violated this tribunal's
6 Order to timely produce exhibits, by filing a new Proposed List of Exhibits and Witnesses under
7 the guise of a supplementary. The Division's Response claims that the new Proposed Exhibit List
8 is nothing more than non-material filler to their original Exhibit List. It is the Division that
9 ignores and apparently successfully convinced the ALJ to ignore Respondents' consistent desires
10 to move this matter along and conduct discovery.
11

12
13 It is the Division that has taken advantage of its own delays, obvious circumvention of the
14 discovery rules and continuing attempts to find and propose evidence (albeit unsuccessfully) to
15 bolster a case that should have never been filed in the first place.

16 The Division's Response simply ignores, mischaracterizes or misstates most of the
17 arguments made by Respondents in their Joint Motion for Continuance. As an example, the
18 Division's Response ignores a very serious matter raised by the Joint Motion for Continuance,
19 which apparently was not considered by the ALJ. The Respondents' Motion points out that the
20 Division's new Proposed Exhibit List has raised questions that must be resolved by the
21 Respondents' counsel to determine whether or not conflicts exist for Respondents' counsel. That
22 is not to say that conflicts do exist, but simply that Respondents' counsel has not had the
23 opportunity to properly investigate the possible existence of conflicts the potential for which has
24 now been raised by the new exhibits submitted by the Division. This issue, clearly raised by
25 Respondents' Joint Motion for Continuance is completely ignored by the Division in its Response
26

1 and in the denial of Respondents' Motion.

2 One of the issues raised by Respondents' Joint Motion for Continuance relates to the
3 Division's consistent and lengthy delay in responding to Respondents' counsel's Open Records
4 Request. The Division responded with an argument, the absurdity of which is only exceeded by
5 the arrogance in raising it. As pointed out in Respondents' Joint Motion for Continuance,
6 Respondents' counsel made an Open Records Request to the Division on November 10, 2004.
7 The Division, notwithstanding its obligation to respond in fourteen (14) days, imposed upon
8 Respondents' goodwill by consistently seeking and/or notifying Respondents of delays, providing
9 excuses for those delays and essentially putting Respondents off for four months until virtually the
10 eve of trial.
11

12 The Division does not deny its failure to meet its statutory obligation under the Open
13 Records Act or its continuing "foot dragging" tactics with respect to this issue. Rather, the
14 Division's Response has the audacity to claim that it is the Respondents who failed to insist that
15 the Division produce the documents timely, that it is the Respondents, once the documents were
16 produced, who waited a few days before viewing them and it is the Respondents who somehow
17 are responsible and, thus, should be penalized for acting as gentlemen and believing the Division's
18 now obvious disingenuous excuses for failure to produce the documents.
19

20 In another transparent attempt to deflect how serious a change in the pre-hearing landscape
21 was created by the Division's new Proposed Exhibit and Witness List, the Division claims that the
22 substitution of three new witnesses, and the proper identification of one existing witness is "no big
23 deal." In fact, it is a big deal. Respondents have had to prepare for this hearing for months relying
24 upon the Respondents' Witness and Exhibit List that was presented in December 2004. To
25 eliminate three witnesses means that all of that preparation by Respondents with respect to those
26

1 three witnesses may now be useless.⁶ The addition of three new witnesses within only eighteen
2 (18) days of the scheduled hearing, places Respondents in the position of having to prepare, from
3 scratch, cross-examination and information (including submission of new document lists) with
4 respect to those witnesses. Simply stated, that is grossly unfair. Since the Division was successful
5 in its argument that it need not present to Respondents the addresses or contact information for
6 their named witnesses, Respondents are placed under the extra burden of having to insure that it
7 has the right three witnesses to prepare for.

9 The Division's Response argument regarding the newly-named Mr. Huntley is equally
10 disingenuous and seeks to avoid reality. The Division originally named a witness by the name of
11 Thomas Newland. Since the Division refused to provide any contact information, Respondents
12 were left with the chore of determining who Thomas Newland was. Since the Division identified
13 Mr. Newland as a leaseholder, Respondents assumed that he was the witness and prepared
14 accordingly.

16 The Division is now claiming that the change of name of the witness from Thomas
17 Newland to Robert Newland again, is "no big deal." After all, argues the Division, it is nothing
18 more than changing the person's first name. The Division somehow thinks that the Respondents
19 should be clairvoyant and know that the Division was talking about Robert Newland and not
20 Thomas Newland. The bottom line is that Respondents now have to throw out their preparation
21 for a witness named Thomas Newland and prepare for a witness named Robert Newland.

23 CONCLUSION

24 The Division has consistently and systematically been responsible for delaying this hearing
25 and denying Respondents a quick and speedy hearing to which they were entitled. Now, while
26

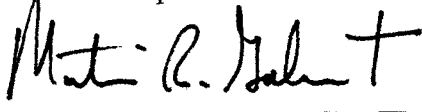
⁶ That is, of course, assuming that the Division does not once again amend its Witness List or seek at hearing to call these now stricken witnesses.

1 continuing to create a moving target of witnesses and exhibits, the Division seeks to cast
2 Respondents in the role of malingerers with respect to this hearing. It is the Division that has
3 changed the landscape of witnesses and exhibits for which Respondents have attempted in vain to
4 obtain discovery and prepare for hearing.

5 The Division's actions in this case should not be rewarded by allowing them to once again
6 deny Respondents their rights to due process and a fair hearing. Thus, Respondents' Joint Motion
7 for Continuance should have been granted.

8 Respectfully submitted this 21st day of March, 2005.

9
10 GALBUT & HUNTER
11 A Professional Corporation

12 By 
13

14 Martin R. Galbut
15 Camelback Esplanade, Suite 1020
2425 East Camelback Road
Phoenix, Arizona 85016

16 and

17 BAKER & McKENZIE, LLP

18 Joel Held
Elizabeth L. Yingling
Jeffrey D. Gardner
2300 Trammel Crow Center
2001 Ross Avenue - Ste. 2300
20 Dallas Texas 75201
Attorneys for Respondents
Yucatan Resorts, Inc.; Yucatan Resorts, S.A.;
22 RHI, Inc.; RHI, S.A.

23 and

24 ROSHKA HEYMAN & DeWULF, PLC

25 Paul J. Roshka, Esq.
One Arizona Center
400 E. Van Buren St. - Ste. 800
26 Phoenix, Arizona 85004
Attorneys for Respondent Michael Kelly

1
2
3 ORIGINAL and 13 copies of the foregoing
hand-delivered this 21st day of March, 2005 to:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington Street
Phoenix, Arizona 85007

7 COPY of the foregoing hand-delivered
8 this 21st day of March, 2005 to:

9 Honorable Marc Stern
10 Administrative Law Judge
Hearing Division
11 Arizona Corporation Commission
12 1200 West Washington Street
Phoenix, Arizona 85007

13 Jaime Palfai, Esq.
14 Matthew J. Neubert, Esq.
Securities Division
15 Arizona Corporation Commission
16 1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

17 

18 Martin R. Galbut, Esq.
19
20
21
22
23
24
25
26